THE HON'BLE MR JUSTICE V. ESWARAIAH

WRIT PETITION No.5564 of 2006

ORDER:

It is the case of the petitioners that they are all the owners and possessors of the property bearing H.No.22-7-473 to 479 situated at Purani Haveli, Hyderabad.

It is stated that in February 1999, the existing road was sought to be widened by 30 feet more by affecting 15 feet on either side of it. As, the respondents tried to take away the road width of 30 feet from one side, W.P.No.4485 of 1999 was filed before this Court, and at that time it was stated that no proposal for widening of the road was pending. The order in the writ petition was passed. It is stated that while the matter stood thus, on 3-1-2006, the Municipal authorities informed that road widening programme has been taken up and they are proceeding with the demolition work up to 30 feet from one side of the road alone. Hence, I am not inclined to express any opinion on merits including the action of the respondents whether they are justified in acquiring the lands from one side only or from both sides. It is for the technical experts to make enquiry and take further action.

The grievance of the petitioners is that there is no urgency or emergency to take possession of the lands in question to invoke the provisions as contemplated under Section 17(1) and (2) of the Land Acquisition Act (for short 'the Act'). The provisions under Section 17(4) of the Act can be invoked to take possession of the lands if there is urgency as contemplated under Section 17(1) and (2) of the Act, in case there is an emergency to take such possession. It is stated that without there being any emergency for taking possession of the lands for invoking the provisions under Section 17(4) of the Act, Section 5(A) Enquiry shall be made applicable. Form No.5 Draft Declaration under Section 6 of the Act and Form 2-A, Memo No.D3/69/2006, dated 25-2-2006 was published in Deccan Chronicle on 3-3-006. I am of the opinion that the invocation of the powers under Section 17(4) of the Act and dispensing with the enquiry under Section 5(A) of the act is illegal and unsustainable.

In the instant case, I am of the opinion that it cannot be said that there is extreme urgency or emergency as contemplated under Section 17(2) and (4) of the Act to invoke provisions of Section 17 and dispensing with enquiry under Section 5(A) of the Act and therefore, the declaration made in proceedings No.D3/69/2006 has been published in the Deccan Chronicle daily newspaper dated 3-3-2006 is hereby set aside upholding the issuance of Section 4(1) notification of the Act directing the respondents to conduct Section 5(A) enquiry and take appropriate action in accordance with law.

Accordingly, the writ petition is disposed of at the stage of admission.

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21st March, 2006

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